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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DAVID SHAFFER,)	CASE NO.:
)	
Plaintiff,)	
)	
vs.)	<u>COMPLAINT</u>
)	
AETNA LIFE INSURANCE COMPANY,)	
as Claims Administrator for Advenir Real)	
Estate Management, LLC Welfare Plan,)	
)	
Defendant.)	
)	
)	

Plaintiff DAVID SHAFFER, by and through his attorney, JULIE A. MERSCH, ESQ., complains and alleges as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory and injunctive relief and disability benefits owed, and arises under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.

2. This Court has subject matter jurisdiction under ERISA, 29 U.S.C. § 1132(e)(1); and general federal jurisdiction pursuant to 28 U.S.C. § 1331.

3. Venue is proper in this district, pursuant to 29 U.S.C. § 1132(e)(2).

GENERAL ALLEGATIONS

4. Plaintiff DAVID SHAFFER, at all times relevant, was a qualified participant

1 in the Advenir Real Estate Management, LLC Welfare Plan (“LTD Plan”) within the
2 meaning of 29 USCA § 1002(7) of ERISA.

3 5. Advenir Real Estate Management, LLC was Plaintiff’s employer. Advenir
4 Real Estate Management, LLC is the Plan Administrator of the LTD Plan.

5 6. Defendant AETNA Life Insurance Company (“AETNA”) is Defendant LTD
6 Plan’s agent and the designated Claims Administrator and Named Fiduciary of the LTD Plan
7 pursuant to 29 U.S.C. § 1002(21)(A).

8 7. Upon information and belief, AETNA fully insures the LTD Plan and
9 performs claims handling functions for the LTD Plan, including the ultimate decision of
10 whether to accept, deny, or terminate a claim.

11 8. The court’s review of Plaintiff’s claim denial is *de novo*.

12 9. Pursuant to the terms of the LTD Plan, Plaintiff made a claim to AETNA for
13 Long-Term Disability benefits under the LTD Plan, after AETNA approved and paid
14 SHAFFER’s short-term disability (“STD”) claim through the maximum benefit period.
15 Specifically, while Plaintiff was covered under the STD and LTD Plans, he suffered a
16 disability as a result of, *inter alia*, the effects of hidradentitis suppurativa, an auto-immune
17 disorder that leads to painful cellulitis of the skin and abscesses on and underneath the skin
18 resulting in inability to sit, stand, or walk for extended periods of time and inability to
19 concentrate for extended periods of time, rendering him disabled as of **November 7, 2016**.

20 10. Pursuant to the LTD Plan:

21 You meet the test of disability on any day that:

22 You cannot perform the material duties of your own occupation solely because of an
23 illness, injury or disabling pregnancy-related condition; and

24 Your earnings are 80% or less of your adjusted predisability earnings.

25 11. As of November 2016, SHAFFER worked as President of Advenir Real Estate
26 Management, LLC. The material duties of President include, *inter alia*: overseeing day-to-

1 day operations; meeting with clients and bankers; travel; walking properties; concentrating;
2 drafting documents; attending and leading meetings; and directing. The physical duties of
3 SHAFFER's occupation were consistent with "light duty" level.

4 12. On or about January 26, 2017, AETNA approved SHAFFER's LTD claim,
5 beginning February 6, 2017.

6 13. AETNA terminated SHAFFER's claim on or about November 14, 2017 in a
7 letter dated November 17, 2017 due to "no medical evidence to validate any restrictions and
8 limitations which would preclude you from any level of work."

9 14. On or about November 27, 2017, SHAFFER appealed the termination of
10 benefits.

11 15. On or about March 27, 2018, AETNA denied SHAFFER's appeal based on its
12 contention that "the medical evidence available for review does not support a functional
13 impairment with regards to a behavioral health condition nor are there supported restrictions
14 and/or limitations that would preclude your ability to perform the material duties of your own
15 sedentary physical demand level occupation as a result of the hidradentitis suppurativa."

16 16. The appeal denial letter advised SHAFFER that the decision was AETNA's
17 final decision on the claim and further advised him of his right to file suit under ERISA.

18 **Claim for Relief: Wrongful Denial of Benefits under ERISA**

19 **§502(a)(1)(B), 29 U.S.C. §1132 (A)(1)(B)**

20 17. Paragraphs 1- 16 are incorporated by reference as if fully set forth herein.

21 18. DEFENDANT has wrongfully terminated long-term disability benefits to
22 Plaintiff in violation of the subject plan provisions, ERISA, and interpretive case law for the
23 following reasons:

- 24 a. DEFENDANT improperly terminated benefits on the basis that SHAFFER
25 could not perform his own occupation, based on its reclassification of it as a
26

1 sedentary occupation from its prior determination that it was a light duty
2 occupation.

3 b. DEFENDANT failed to conduct an Independent Medical Examination
4 despite the fact that SHAFFER provided objective and subjective evidence
5 that his hidradenitis suppurativa prevented him from performing the material
6 and substantial duties of his occupation as President of a Real Estate
7 Management company.

8 c. DEFENDANT failed to consider SHAFFER's severe pain in evaluating
9 whether his pain would allow him to maintain the focus and concentration
10 required to perform his job duties. As of January 2018, SHAFFER had to be
11 referred to pain management due to the severity of his pain and had
12 "significant tenderness to palpation over the suprapubic and sacral lesions." In
13 March, 2018, Dr. Shah reported to Wendy Weinstein, MD that SHAFFER had
14 probable "pathology in the intestinal wall" contributing to "his current pain."

15 d. DEFENDANT conducted surveillance on SHAFFER which unequivocally
16 supported his inability to perform his own occupation. Nevertheless,
17 DEFENDANT ignored that evidence in its decision to terminate SHAFFER's
18 benefits. DEFENDANT also ignored the evidence submitted by SHAFFER's
19 wife sent in as part of his appeal, detailing his inability to perform without
20 assistance the activities of daily living.

21 e. DEFENDANT required SHAFFER to file for Social Security Disability
22 (SSDI) benefits and sought recoupment of its overpayment to SHAFFER once
23 he was awarded SSDI benefits (as of a disability date of **November 7, 2016**),
24 but then ignored the Social Security Administration's determination of total
25 disability from any gainful employment.
26

1 19. As a result of the foregoing actions and inactions, DEFENDANT has failed to
2 pay SHAFFER long-term disability benefits from November 14, 2017 to the present.

3 **PRAYER FOR RELIEF**

4 20. SHAFFER respectfully requests that this Court review the termination of
5 benefits and appeal denial in this case and declare that he is entitled to: 1) past long-term
6 disability benefits from November 14, 2017 through the present; 2) an award of pre-judgment
7 and post-judgment interest; and 3) payment of attorney's fees and costs associated with
8 attempting to secure the benefits owed to him pursuant to ERISA §502(g)(1), 29 U.S.C.
9 §1132(g)(1); and 4) any other appropriate relief allowed under law.

10 DATED this 12th day of December, 2018.

11 LAW OFFICE OF JULIE A. MERSCH

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13 By: /s/ Julie A. Mersch
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